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ORIGINAL

Roland D. Tirey
AO 40574
700 Conley Lake Road
Deer Lodge, MT 59722

IN THE SUPREME COURT OF THE STATE OF MONTANA

Case No. _____

ROLAND D. TIREY,
Applicant, pro se,

vs.

THE MONTANA DEPARTMENT OF
CORRECTIONS AND THE
ELEVENTH DISTRICT COURT,
Defendants.

APPLICATION FOR WRIT OF
PROHIBITION

FILED

OCT 10 2000

Ed Smith
CLERK OF SUPREME COURT
STATE OF MONTANA

COMES NOW, the applicant herein, and respectfully requests that this court issue a Writ of Prohibition:

1. Prohibiting the Montana Department of Corrections from conducting any inquiry into my conduct in the county jail, prior to sentencing, when making a determination as to my eligibility for good time under this court's ruling in *MacPheat v. Mahoney*, 2000 MT 62, 997 P.2d 753, 57 St. Rep. 291.

2. Prohibiting the district court from remanding the determination of amount of good time under *MacPheat v. Mahoney* 2000 MT 62, 997 P.2d 753, 57 St. Rep. 291., to the Department of Corrections.

MEMORANDUM

What has transpired is that district court's have begun making a determination that an individual was incarcerated in the county jail, and that the sole reason for his or her incarceration was an inability to make bail, then remanding to the Montana Department of Corrections the determination of the amount of good time to be given. See Exhibit A for an example of such an order. The Department of Corrections has then been requiring the inmate to prove that his or her behavior was acceptable while in the county jail, see Exhibit B, enclosed. First, in *MacPheat v. Mahoney*, 2000 MT 62, 997 P.2d 753, 57 St. Rep. 291, this court found that the Department of Corrections was not awarding good time in compliance with the United States Constitution. Hence this court took the pre sentence award of good time out of the Department's hands and placed it in the District Court's of this state. There is no provision in *MacPheat*

1 v. *Mahoney*, 2000 MT 62, 997 P.2d 753, 57 St. Rep. 291 for the Department of Corrections to make the
2 determination, "If the trial court determines that MacPheat is entitled to good-time credit for the time
3 spent in the county detention facility under the test articulated above, *then the court shall determine the*
4 *amount of good-time credit to which MacPheat is entitled and shall order DOC to apply that to the*
5 *reduction of his sentence.*" *Emphasis added, MacPheat v. Mahoney*, 2000 MT 62, 997 P.2d 753, 57 St.
6 Rep. 291

7 In addition, there is no provision in *MacPheat v. Mahoney*, 2000 MT 62, 997 P.2d 753, 57 St.
8 Rep. 291 for a determination to be made as to the individual's conduct in the county detention facility.
9 This is largely due to the state's contention, that, "The Court noted that while prisons are primarily
10 rehabilitative in nature and have adequate resources for maintaining conduct records, jails do not have
11 rehabilitation programs and have limited record keeping resources available for good time computations.
12 *Brief of state, dated February 11, 2000, page 5, lines 17 to 20.*

13 CONCLUSION

14 The district court's and the DOC have contrived to usurp this court's authority and are acting in
15 clear disregard of this court's order in *MacPheat v. Mahoney*, 2000 MT 62, 997 P.2d 753, 57 St. Rep.
16 291, and they should be order to stop, and to comply fully with the clear instructions provided in
17 *MacPheat v. Mahoney*, 2000 MT 62, 997 P.2d 753, 57 St. Rep. 291.

18 Respectfully submitted on Oct. 7, 2000.

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21 Roland D. Tirey
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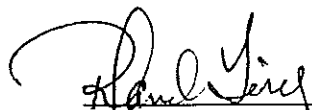
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CERTIFICATE OF SERVICE

This is to certify that on October 7, 2000, a true and accurate copy of the foregoing was placed in the hands of Montana State Prison officials, for mailing, postage prepaid, by United States Mail to:

Montana Department of Corrections
1539 Eleventh Avenue
Helena, MT 59620

Eleventh District Court
800 S. Main Street
Kalispell, MT 59901



Roland D. Tirey
AO 40574
700 Conley Lake Road
Deer Lodge, MT 59722

A

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
YELLOWSTONE COUNTY

RUDY MEISSNER

Plaintiff.

vs.

STATE OF MONTANA,

RESPONDENT.

Cause No. DC 89-037

Judge: Russell Fagg

ORDER

The Petitioner having moved for good time credit in DC 89-037, and there being no objection from the State, IT IS HEREBY ORDERED that the Department of Corrections shall take into consideration the enumerated periods of time the Court credited the Petitioner in the Judgment and Commitment, and the Department shall recalculate the discharge date with the good time credit being factored into the sentence. The basis for this Order is the decision in *MacPheat v. Mahoney*, (2000), ___ Mont. ___, ___ P.2d ___, WL 264200, MT S.Ct. No. 00-006, decided March 9, 2000. The date of the offense was prior to the abolishment of good time credit, and the days to be credited are listed in the Judgment and Commitment on file with the Department.

DATED this ___ day of ___, 2000.

DISTRICT COURT JUDGE

cc: Kevin Peterson, Deputy County Attorney
Department of Corrections
Petitioner

Kevin R. Peterson
DEPUTY YELLOWSTONE COUNTY ATTORNEY
Room 701, Courthouse
P.O. Box 35025
Billings, MT 59107
(406) 256-2870

Attorney for Yellowstone County

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
YELLOWSTONE COUNTY

RUDY MEISSNER
PETITIONER.
vs.

STATE OF MONTANA,
RESPONDENT.

Cause No. DC 89-037

Judge: Russell Fagg

RESPONDENT'S RESPONSE TO
PETITIONER'S PETITION FOR POST-
CONVICTION RELIEF FOR GOOD TIME
CREDIT

The State of Montana in the above captioned matter, by and through counsel, responds to the Petitioner's request¹ for "Good Time Credit" as follows in DC 89-037, and asks this Court to grant the relief requested based upon the Montana Supreme Court's ruling in *MacPheat v. Mahoney*, (2000) MT S.Ct. No. 00-006, decided March 9, 2000. The State hereby waives any affirmative defenses it may have regarding statute of limitations for petitions for post-conviction

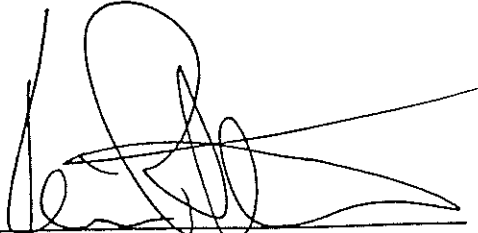
¹ Requests for "good time" have been received in the form of writs, motions, and petitions for post-conviction relief. An applications for a writs of *habeas corpus* to the Montana Supreme Court or the district court where the prisoner is incarcerated is a proper avenue for those presently detained who would not be if the relief were granted. Petitions for post-conviction relief filed in the district where the prisoner was sentenced is proper, particularly where the State is waiving procedural and jurisdictional defenses. Filing of motions in the original proceedings is not proper since the remedy sought is civil. Therefore, motions filed in the original criminal cause numbers should be converted to and treated as petitions for post-conviction relief.

1 relief. The State waives procedural defects that may be present in the requests. Additionally, the
2 State requests for purposes of applications for good time credit in any form other than a petition
3 for post-conviction relief such as writs for habeas corpus, motions for good time credit direct filed
4 into the original criminal cause number, motions to amend the judgment direct filed into the
5 original cause number, that the Court make a finding that the filing be considered as a petition for
6 post-conviction relief under the analysis below.

7 The Court has the discretion to consider a "motion" filed in the closed criminal
8 proceeding as a petition for post-conviction relief. In *State v. Howard*, (1997) 282 Mont. 522,
9 938 P.2d 710, the court construed a direct filed motion as a petition for post conviction relief,
10 notwithstanding the filing did not comport with the requirements under § 46-21-101M.C.A.
11 Strict compliance with the form prescribed by statute for post-conviction petitions is not an
12 absolute prerequisite to the consideration of the petition on the merits, although each petition is
13 expected to comply, *pro se* petitioners are given more lee way. *Id.* at 712. In *Howard*, the
14 court determined that the relief requested was of the proper kind entertained by a petition for post-
15 conviction relief, and construed it as such. *Id.* at 712.

16 The Court should order the Montana Department of Corrections to calculate good time
17 based upon the date of the offense and the days of pre-sentence detention as enumerated as credit
18 for time served in the Judgment and Commitment. The Court should only order "good time"
19 credit for offenses committed up to the date of the abolishment of the "good time" statutes.

20 DATED this 27th day of April, 2000.

21 
22 Kevin R. Peterson
23 Attorney for Yellowstone County

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Response was sent by U.S. mail, postage prepaid, to the following:

Rudy Meissner
AO# 20615
700 Conley Lake Road
Deer Lodge, Montana 59722

this 28th day of April, 2000.

Kay Ramboldt
Kay Ramboldt, Legal Assistant
Yellowstone County Attorney's Office

NOTIFICATION OF AVAILABILITY OF PRE-SENTENCE GOOD TIME CREDITS

The Department of Corrections has received an order from your sentencing court advising the Department that you may be eligible for pre-sentence good time credits. Attached hereto is the "Pre-Sentence Good Time" form, which indicates the Department's determination of the maximum amount of good time credits to which you may be entitled.

If there are no numbers in the space marked "Totals" in the "Amt. Good Time Possible" column, then that means the Department has determined that you are not entitled to any pre-sentence good time credits, and the reason for your ineligibility is stated on the form. If you are not entitled to any pre-sentence good time credits, there is no appeal, and that is the end of the process.

If there are numbers in the space marked "Totals" in the "Amt. Good Time Possible" column, then that means the Department has determined that you may be eligible for good time credits up to the amount of days indicated. In order to receive good time credits, you must provide written evidence to a Disciplinary Hearings Officer or Regional Probation and Parole Supervisor (depending upon your current place of incarceration) that your behavior while incarcerated in the county jail was appropriate. You should contact the appropriate county jail and request that the jail provide you with some documentation of your behavior at the county jail. If the jail does not have any records, you can provide that information to the Hearings Officer/Regional Supervisor. When you have received the written documentation, contact the Disciplinary Hearings Officer or Regional Supervisor and notify them that you wish to have a hearing to determine your pre-sentence good time credits. They will schedule a hearing, and the purpose of the hearing will be to determine whether your behavior was appropriate while in the county jail.

IT IS YOUR RESPONSIBILITY TO OBTAIN THE APPROPRIATE WRITTEN EVIDENCE FROM THE COUNTY JAIL AND TO NOTIFY THE HEARINGS OFFICER/REGIONAL SUPERVISOR THAT YOU WISH TO BE CONSIDERED FOR PRE-SENTENCE GOOD TIME. YOU WILL NOT BE CONSIDERED FOR PRE-SENTENCE GOOD TIME UNLESS YOU OBTAIN THE DOCUMENTATION AND REQUEST A HEARING.

Following the hearing, the Hearings Officer/Regional Supervisor will make a decision how much, if any, pre-sentence good time credits to recommend that you receive. The recommendation will be sent to the Director/Warden or their designee, who will make the final decision as to the amount of pre-sentence good time credits you will receive. You will be provided an "Award of PreSentence Good Time Credits" form, which will advise you the amount of good time credits you were awarded. The decision of the Director/Warden will be final, and there is no appeal of the decision.

! Huh!

Name Roland D. Tirey, Ao 40574
Address 700 Conlay Lake Road
Deer Lodge, MT 59722
Telephone No. NA

* * * * *

IN THE SUPREME COURT OF THE STATE OF MONTANA

* * * * *

Roland D. Tirey
Plaintiff

vs.

Montana Dept. of Corrections & 11th District Court
Defendant

* * * * *

AFFIDAVIT IN SUPPORT OF APPLICATION TO PROCEED ON APPEAL
WITHOUT PREPAYMENT OF COSTS

* * * * *

I, Roland D. Tirey, being first duly sworn, depose
and say that I am the Applicant in the above-entitled case;
that in support of my application to proceed on appeal without
being required to repay fees, costs or give security therefor, I
state that because of my poverty I am unable to pay the costs of
said proceeding or give security, therefor; that I believe I am
entitled to redress; and that the issues which I desire to present
on appeal are the following: Writ of Prohibition

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed? No

a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer NA

b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received. April 1998 - \$700.00

SMITH Trucking

2. Have you received within the past 12 months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source? No

a. If the answer is yes, describe each source of income, and state the amount received from each during the past 12 months.

3. Do you own any cash or checking or savings account?

Yes

a. If the answer is yes, state the total value of the items owned. \$160.00

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? No

a. If the answer is yes, describe the property and state its approximate value. _____

5. List the persons who are dependent upon you for support and state your relations to those persons. None

I understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury.

Paul Lutz

Subscribed and Sworn to before me this 4 day of OCTOBER, 19~~19~~2000

Rob Schaefer

Notary Public

NOTARY PUBLIC for the State of Montana
Residing at Deer Lodge, Montana
My Commission Expires September 4, 2001

Let the applicant proceed without prepayment of costs.

Supreme Court Justice